Legal Update

September 30, 2011

Eyewitness Identifications

Last week the Supreme Judicial Court decided the case of Commonwealth vs. Walker (SJC-10470). In Walker, the SJC did two important things:

1. It provided new guidance for police to follow when showing an eyewitness a photographic array. The SJC stated that "an all-suspect array significantly and needlessly increases the potentially unjust consequences that may arise from a false positive identification." Therefore, "[u]nless there are exigent or extraordinary circumstances, the police should not show an eyewitness a photographic array, whether simultaneous or sequential, that contains fewer than five fillers for every suspect photograph."

2. It announced it will convene a study committee on eyewitness identification. In a footnote, the SJC stated: "Because eyewitness identification is the greatest source of wrongful convictions but also an invaluable law enforcement tool in obtaining accurate convictions, and because the research regarding eyewitness identification procedures is complex and evolving, we shall convene a study committee to consider how we can best deter unnecessarily suggestive procedures and whether existing model jury instructions provide adequate guidance to juries in evaluating eyewitness testimony."

It is important for prosecutors to be aware that eyewitness identification is a "hot topic." In the Commonwealth, several bills are pending in the legislature regarding eyewitness identification. On the national scene, the Walker decision discussed at length the New Jersey case of State vs. Henderson, N.J. Supreme Court No. A-8-08. In Henderson, the NJ Supreme Court appointed a Special Master to review the legal standard for the admissibility of eyewitness testimony. The Special Master reviewed more than 200 empirical research journals and reports relative to eyewitness identification procedures, and the NJ Supreme Court adopted new rules for determining the admissibility of eyewitness identifications.

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